

(2017) 07 SIK CK 0004
In the Sikkim High Court
Case No : 1 of 2017

The Branch Manager Vs Mr. Subash Rai & Ors

Date of Decision : 12-07-2017

Acts Referred:

Citation : (2017) 07 SIK CK 0004

Hon'ble Judges : Meenakshi Madan Rai

Bench : Single Bench

Advocate : Pema Ongchu Bhutia, Ajay Rathi, Rahul Rathi, Phurba Diki Sherpa, Deven Sharma Luitel

Judgement

1. Contending that the learned Motor Accident Claims Tribunal, East Sikkim at Gangtok (for short "Claims Tribunal"), was in error in granting compensation to the tune of Rs.26,49,500/- (Rupees twenty-six lakhs, forty-nine thousand and five hundred) only, in MACT Case No. 7 of 2016 on 29.11.2016, the instant Appeal assails the award of the learned Claims Tribunal on the following grounds;

i. That, the multiplier adopted by the learned Claims Tribunal was "18", instead of "17", in terms of the ratio in Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another., (2009) 6 SCC 121 as the age of the deceased on the date of accident was 27 years.

ii. That, the learned Claims Tribunal erred in not considering that the deceased was a bachelor and deducted one-third only towards personal and living expenses of the deceased, when a deduction of 50% was appropriate, as laid down in Sarla Verma¹.

2. Learned Counsel for the Respondents No. 1 to 6, fairly conceded that the choice of multiplier ought to have been "17", as the victim was 27 years at the relevant time. However, the argument pertaining to 50% deduction was vehemently contested, inter alia, on the ground that the deceased has parents and four siblings, who are dependent on him. That, the father is aged about 50 years, while the mother is aged about 48 years and both are struggling with several physical ailments and are unable to earn a living. Consequently, both parents and siblings have lost their bread winner. Relying on the ratio of Sarla

Verma¹, it was pointed out that the Judgment specifically provides at Paragraph 30, that deduction towards living expenses ought to be calculated on the basis of the dependents. As the deceased had six dependents, the deduction ought to have been calculated accordingly and that in fact, the learned Claims Tribunal was in error in deducting one-third towards living expenses of the deceased, without considering his dependents. No submissions were made by learned Counsel for the Respondent No.7.

3. Having heard the parties and on admission of learned Counsel for the Respondents No. 1 to 6, with regard to the multiplier, no further discussion need ensue on this point and the matter is accordingly settled, inasmuch as the multiplier to be adopted shall be "17" in terms of the ratiocination in Sarla Verma¹.

4. I now limit myself to the question of 50% deduction, for which it not necessary to delve into the facts of the case. Suffice it to say that admittedly the deceased was a bachelor at the time of the accident, on account of which he met his death on the intervening night of 29.12.2015 to 30.12.2015, near Makha, East Sikkim, while he was travelling from Mangan to Singtam, in a vehicle Maruti Alto, bearing Registration No. SK-03-T-0170, driven by one Budhi Raj Subba.

5. In Sarla Verma ¹, which was also upheld in the decision of Munna Lal Jain and Another vs. Vipin Kumar Sharma and Others., (2005) 6 SCC 347 it was held at Paragraphs 30 and 31, as follows; "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, one-fifth (1/5th) where the number of dependent family members exceeds six."

31. When the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father."

6. Thus, it is clear that the mother only can be considered as a dependent of her deceased bachelor son. The argument of the Respondents that the deduction for

living expenses of the deceased ought to be based on the number of his dependents, flies in the face of the settled position of law, in other words the deduction has to be 50% for personal and living expenses of the deceased, who was a bachelor. His father and siblings cannot be considered as his dependents.

7. Although, it has been urged by learned Counsel for the Respondents No. 1 to 6, that the legislation is a benevolent legislation and should be extended accordingly. However, as per the decision extracted supra, it is clear that siblings cannot be considered as the responsibility of the deceased. Moreover, if we are to take the retirement age of government servants as a yardstick, in the case at hand, the father has not even stepped into the age of retirement.

8. The learned Counsel for the Respondents contended that the learned Claims Tribunal was in error in granting a sum of Rs.2500/- (Rupees two thousand & five hundred) only, towards Loss of Estate, when it has been clearly laid down in the decision of Kalpana Raj & Ors. vs. Tamil Nadu State Transport Corpn., (2015) 2 SCC 764 and Sandhya Rani Debbarma & Ors. vs. National Insurance Company Ltd. & Anr., 2016 (8) SCJ 775 that the amount to be granted for such compensation ought to be Rs.1,00,000/- (Rupees one lakh) only.

9. In view of the said decision, there is no reason to hold otherwise. Thus, a sum of Rs.1,00,000/- (Rupees one lakh) only, is allowed as compensation towards Loss of Estate.

10. Having considered the submissions of learned Counsel on the aspects above and after perusing the records, the citation of learned Counsel at the Bar and the impugned Judgment, I am of the considered opinion that the compensation granted by the learned Claims Tribunal is to be recalculated as follows;

Monthly income of the deceased Rs. 12,000.00

Annual Income of the deceased (Rs.12,000/- x 12 months) Rs. 1,44,000.00

Multiplier of "17" adopted. Rs.24,48,000.00

Add 50% of Rs.24,48,000/- as Future Prospects Rs.12,24,000.00

Rs.36,72,000.00

Less 50% of Rs.36,72,000.00 as deceased was a Bachelor Net yearly income
Rs.18,36,000.00

Rs.18,36,000.00

Add Funeral Expenses Rs. 25,000.00

Add Loss of estate (in terms of the decision of Munna Lal) Rs. 1,00,000.00

Add Cost of transportation of the body of the victim Rs. 5,000.00

Add Non-pecuniary damages Rs. 25,000.00

Total = Rs.19,91,000.00

(Rupees nineteen lakhs and ninety-one thousand) only.

11. The Judgment of the learned Claims Tribunal stands modified accordingly and Appeal is allowed to that extent.

13. Consequently, the Appellant-Insurance Company is directed to pay the awarded amount to the Respondent No.2, within one month from today with interest @ 10% per annum, failing which the Appellant-Insurance Company shall pay simple interest @ 12% per annum, from the date of filing of the Claim Petition till full realisation.

14. Copy of this Judgment be sent to the Learned Motor Accident Claims Tribunal, East Sikkim at Gangtok, for information.

15. Records be remitted forthwith.